

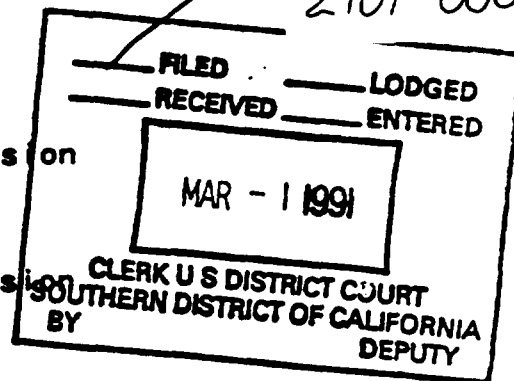
2401-00020

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARTHUR DICELLO and ROBERT  
GLOEDE,

Defendants.

NO. CIV. 90-0913-B(M)

PARTIAL CONSENT DECREE

WHEREAS, the United States of America, on behalf of the Administrator of the Environmental Protection Agency ("EPA"), has filed a complaint ("the complaint") herein against Defendants Arthur DiCello and Robert Gloede, pursuant to § 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9607(a), for

recovery of the costs incurred by the United States in responding to the alleged release and threatened release of hazardous substances at the California Creative Dynamics, Inc. site located at 411 Raven Street, San Diego, California; and

WHEREAS, Arthur DiCello denies liability; and

WHEREAS, the United States and Arthur DiCello agree that settlement of the dispute between them herein without costly and protracted litigation is in the public interest; and

WHEREAS, Arthur DiCello, by and through his representatives, has agreed to the execution of this Partial Consent Decree in final settlement of the claims against him alleged by the United States in the complaint;

NOW, THEREFORE, without trial, adjudication or admission of any issue of law, fact or responsibility by Arthur DiCello,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

DEFINITIONS

The following definitions shall apply to this Decree:

A. The "California Creative Dynamics, Inc. site" is the parcel of land on which EPA's response action took place and is located at 411 Raven Street, at the corner of Raven and Lockridge Streets, San Diego County, San Diego, California.

B. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C.

§ 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

C. The "Effective Date" of this Decree shall be the date upon which it is signed collectively by the United States and Defendant Arthur DiCello.

D. The date of "Entry" of this Decree shall be the date it is signed by the Court.

E. The term "days" shall mean calendar days.

F. Terms not otherwise defined herein shall have their ordinary meanings unless defined in § 101 of CERCLA, 42 U.S.C. § 9601, or in the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, in which case the definition in CERCLA or the NCP shall control.

## II

### JURISDICTION

The parties agree that this Court has jurisdiction over the subject matter of this action and has personal jurisdiction over Defendant Arthur DiCello pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. §§ 1345 and 2201. Defendant waives any objection he may have to venue in this Court. For purposes of entering and enforcing the provisions of this Partial Consent Decree, the complaint states a claim upon which relief can be granted.

## III

### PARTIES BOUND

This Partial Consent Decree shall be binding upon the United States on behalf of EPA and upon Defendant Arthur DiCello, his heirs, agents, successors in interest and assignees.

#### IV

##### REIMBURSEMENT FOR RESPONSE COSTS

A. Arthur DiCello shall pay the sum of \$450,000 (Four Hundred Fifty Thousand Dollars) to the United States for reimbursement of response costs incurred by the United States with respect to the California Creative Dynamics, Inc. site up to and including the effective date of this decree. Payment shall be made directly from escrow from the proceeds of the sale of the California Creative Dynamics, Inc. site. Payment shall be made within six months of the entry of this Consent Decree. The United States shall deposit with the escrow for the sale of the California Creative Dynamics, Inc. site a release sufficient for recording to release the Superfund lien on the California Creative Dynamics, Inc. site and a dismissal with prejudice of Defendant Arthur DiCello in this action, case number CIV 90-0913B. The lien release and dismissal shall not be released from escrow for recording and filing until payment of \$450,000 has been made to the United States. If payment is not made within six (6) months of the entry of this Partial Consent Decree, then there shall be no obligation on the part of Plaintiff herein and Defendant Arthur DiCello under this Partial Consent Decree and this Partial Consent Decree shall become null and void and the parties shall retain their rights under the litigation. Payment shall be made by certified or cashier's check to the "EPA Hazardous Substance Superfund" and shall be remitted to EPA Region IX, Attention: Superfund Accounting, P.O. Box 360863M, Pittsburgh, PA 15251. The transmittal of such payment shall reference the California Creative Dynamics, Inc.

site and shall be accompanied by correspondence containing the following identifying information: United States v. Arthur DiCello, et al., DOJ Ref. No., Civil Action No. 90 0913B and the name and complete address of the paying party. Defendant shall send copies of this correspondence to Matt Strassberg, Office of Regional Counsel (RC-5) Region 9, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94103, and to Karen Dworkin, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, when payment is made.

B. If Defendant Arthur DiCello recovers any funds from any insurance policy or coverage concerning California Creative Dynamics, Inc., Arthur DiCello shall receive the first Fifty-Five Thousand Dollars (\$55,000) and any costs expended in pursuit of such recovery. All additional funds recovered by DiCello from insurance over such amounts shall be divided equally between Arthur DiCello and the United States for reimbursement of response costs incurred by the United States with respect to the California Creative Dynamics, Inc. site. Payment shall be made in accordance with the provisions of Section IV.

Defendant Arthur DiCello shall notify the United States in writing within ten (10) days of any judgment obtained by Defendant DiCello awarding him recovery from any insurance policy or coverage concerning California Creative Dynamics, Inc. or any settlement with respect to any insurance policy or coverage concerning California Creative Dynamics, Inc. Defendant shall include with the notification a copy of the judgment or settlement setting forth the full amount of his recovery and

documentation of any sums he claims were expended in that recovery.

C. Nothing herein shall be construed to limit the authority of the United States to seek such other relief, in law or in equity, available to it for Defendant DiCello's violation of this Partial Consent Decree, and the United States expressly reserves all such remedies available to it to enforce the provisions of this Partial Consent Decree.

D. Defendant DiCello shall bear his own costs and attorneys fees in this matter.

#### V

#### EFFECT OF PARTIAL CONSENT DECREE

A. Upon receipt of the payment set forth in paragraph IV. A. above, the United States agrees to dismiss with prejudice all claims in this action against Arthur DiCello.

B. Nothing in paragraph V. A. or in this Partial Consent Decree shall release the Defendant DiCello from liability for response costs, if any, incurred by the United States or by any other Defendant after the Effective Date of this Decree.

C. This Partial Consent Decree shall not bind any person or legal entity other than the United States and Arthur DiCello and his agents, assignees and successors in interest.

D. Defendant DiCello hereby agrees not to sue the United States for any liability for action taken and expenditures made by the United States, its agents and employees, prior to the Effective Date of this Decree in responding to the alleged release or threatened release of hazardous substances into the environment from the California Creative Dynamics, Inc. site.

Further, Defendant DiCello agrees not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, including claims pursuant to § 106(b)(2), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611 and 9612, or assert any other claims or demands, for sums paid in settlement of response costs or arising from any activity performed or expenses incurred pursuant to this litigation or under this Partial Consent Decree or arising from response activities at the site.

E. Nothing in this Partial Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

## VI

### RESERVATION OF RIGHTS

Except as provided in Paragraph V. of this Decree, the United States reserves all claims, demands, and causes of action, past or future, judicial or administrative, in law or equity, including but not limited to, cost recovery and injunctive relief and natural resource damages, against any other person or entity including the Defendant. Nothing contained herein, except as provided in Paragraph V.A. of this Decree, shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, against Arthur DiCello or against any other person or entity not a party to this Decree under § 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607. Any claim, cause of action or defense which the United States or Arthur

DiCello may have against any other person or entity not a party to this Decree, including but not limited to claims for indemnity or contribution, is expressly reserved.

Except as expressly provided in paragraph V., nothing contained in this Decree shall be construed to limit the right of the United States to take judicial or administrative action to enforce federal or state environmental laws or this Partial Consent Decree.

#### VII

##### RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter to enforce the terms and conditions of this partial Consent Decree.

#### VIII

##### NOTICE TO PARTIES

Any notice required under this partial Consent Decree shall be sent by regular mail to Arthur DiCello at the address set forth on his signature page attached hereto. Notice to EPA and the Department of Justice shall be by registered mail and shall be to the addresses listed in paragraph IV. above.

#### IX

##### MODIFICATION

No modification shall be made to this Partial Consent Decree without written notification to and written approval of the parties hereto and the Court. The notification required by this paragraph shall set forth the nature of and the reasons for the requested modifications. No oral modification of this Partial Consent Decree shall be effective.



X

DECREE AND COUNTERPARTS

This Partial Consent Decree may be executed in several counterparts and as executed shall constitute one agreement binding on all the parties hereto, notwithstanding that all the parties are not signatories of the original on the same counterpart.

Date: Jan 6, 1991

THE DEFENDANT:

Arthur D. Dicello  
ARTHUR DICELLO

c/o Richard D. Bregante  
Duke, Gerstel, Shearer & Bregante  
101 West Broadway, Sixth Floor  
San Diego, CA 92101

THE PLAINTIFF:

Date: \_\_\_\_\_

Daniel W. McGovern  
DANIEL W. McGOVERN  
Regional Administrator  
EPA, Region 9

Date: \_\_\_\_\_

Nancy Marvel  
NANCY MARVEL  
Regional Counsel  
EPA, Region 9

Date: \_\_\_\_\_

Matt Strassberg  
MATT STRASSBERG  
Office of Regional Counsel  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94103

X

DECREE AND COUNTERPARTS

This Partial Consent Decree may be executed in several counterparts and as executed shall constitute one agreement binding on all the parties hereto, notwithstanding that all the parties are not signatories of the original on the same counterpart.

THE DEFENDANT:

Date: \_\_\_\_\_

\_\_\_\_\_  
ARTHUR DICELLO  
c/o Richard D. Bregante  
Duke, Gerstel, Shearer & Bregante  
101 West Broadway, Sixth Floor  
San Diego, CA 92101

THE PLAINTIFF:

Date: 2.14.91

John W. McGovern  
DANIEL W. MCGOVERN *for*  
Regional Administrator  
EPA, Region 9

Date: 2/13/91

Nancy Marvel  
NANCY MARVEL  
Regional Counsel  
EPA, Region 9

Date: 2/13/91

Matt Strassberg  
MATT STRASSBERG  
Office of Regional Counsel  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94103

WILLIAM BRANIFF  
United States Attorney

Date:

2/26/91

Stephen V. Petix, AUSA  
STEPHEN V. PETIX  
Assistant United States Attorney  
940 Front Street  
San Diego, CA 92189  
(619) 557-5662

Date:

Richard B. Stewart  
RICHARD B. STEWART  
Assistant Attorney General  
Environment and Natural Resources  
Division

Date:

Karen S. Dworkin  
KAREN S. DWORKIN  
Environmental Enforcement Section  
U.S. Department of Justice  
P. O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-2778

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: FEB 28 1991

Rudi M. Brewster  
UNITED STATES DISTRICT JUDGE  
DISTRICT OF CALIFORNIA

I hereby attest and certify on MARCH 5 1991  
that the foregoing document is a full, true and correct  
copy of the original on file in my office and in my  
legal custody.

WILLIAM W. LUDDY  
CLERK, U. S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
William W. Luddy

CERTIFICATE OF SERVICE

I hereby certify that I am over the age of eighteen years and not a party to this action, and that I served a copy of the Partial Consent Decree this 26th day of February, 1991, by placing a copy in the U.S. Mail, postage prepaid, addressed to the following persons:

*Hand - delivered* Richard D. Bregante  
Duke, Gerstel, Shearer & Bregante  
101 West Broadway, Sixth Floor  
San Diego, CA 92101

Robert Gloede  
6175 Cowles Mountain Blvd.  
La Mesa, CA 92042

*Patricia C. Jurek*